

Text Amendments to 310 CMR 75.00:

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

310 CMR 75.00: COLLECTION, RECYCLING, LABELING AND SALES BAN OF MERCURY ADDED PRODUCTS

Section

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75.01: Purpose and Authority

(1) The purpose of 310 CMR 75.00 is to protect public health, safety, welfare and the environment by implementing the Mercury Management Act (M.G.L. c. 21H, §§ 6A through 6N). 310 CMR 75.00 prohibits the sale or distribution of mercury-added products in Massachusetts unless the manufacturer of the product creates, files with the Department, and implements a convenient and accessible collection plan for mercury-added products at the end-of-life, including a system for the direct return of the mercury-added product to the manufacturer or a collection and recycling plan, in accordance with M.G.L. c. 21C and 310 CMR 30.000, using new or existing collection systems. 310 CMR 75.00 establishes performance standards and other requirements for collection and recycling plans, and requires a performance-based compliance certification in accordance with 310 CMR 70.00. In addition, 310 CMR 75.00 allows manufacturers of mercury-added lamps to satisfy the collection plan requirements via payment of an annual registration fee to the Department to be deposited into a Commonwealth expendable trust. 310 CMR 75.00 also applies to bans on the sale or distribution of mercury-added products and the process for obtaining an exemption to such bans. They also apply to the labeling of mercury-added products.

(2) 310 CMR 75.00 is promulgated pursuant to the authority of M.G.L. c. 21C, §§ 4 and 6 and M.G.L. c. 21H, §§ 6D, 6E, 6F, 6J, 6K and 6N.

75.02: Definitions

The definitions found in 310 CMR 75.02 apply to, and are limited to, 310 CMR 75.00.

Department means the Department of Environmental Protection.

Distributor means any person who imports, consigns, or offers for sale, sells, barter or otherwise supplies mercury-added products in the commonwealth.

IMERC means the Interstate Mercury Education and Reduction Clearinghouse, a regional, multi-state clearinghouse established to coordinate the administration of state laws on mercury-added products.

Irremovable means not intended by the manufacturer to be replaceable by the product user or consumer (*e.g.*, an irremovable component is one for which the manufacturer does not sell replacement component).

Manufacturer means any person, firm, association, partnership, corporation, governmental entity, organization, combination or joint venture which produces a product containing mercury or an importer or domestic distributor of a product containing mercury produced in a foreign country. In the case of a mercury-added multi-component product where the only mercury is contained in a mercury-added component manufactured by a different manufacturer which is intended to be readily removable and replaceable by the consumer or user, the manufacturer is the manufacturer who produced the mercury-added component. If the product or component is produced in a foreign country, the manufacturer is the importer or domestic distributor. However, if a company from whom an importer purchases the merchandise has a United States presence or assets, that company shall be considered to be the manufacturer. 310 CMR 75.02: Manufacturer shall not apply to a “distributor” of motor vehicles as defined in M.G.L. c. 93B, § 1.

Massachusetts Environmental Monitor means a twice monthly publication of the Executive Office of Energy and Environmental Affairs that provides information on projects under review by the Massachusetts Environmental Policy Act (MEPA) office, recent MEPA decisions of the Secretary of Environmental Affairs, and public notices from environmental agencies.

Mercury-added Component means a component that contains mercury.

Mercury-added Formulated Product means a chemical product to which mercury has been added, intentionally or unintentionally, including, but not limited to, laboratory chemicals, cleaning products, cosmetics, pharmaceuticals and coating materials that are sold as consistent mixtures of chemicals.

Mercury-added Lamp means an electric lamp to which the manufacturer intentionally introduces mercury for the operation of the lamp, including, but not limited to, fluorescents, compact fluorescents, black lights, high intensity discharge lamps, ultraviolet lamps and neon lamps.

Mercury-added Product means a product to which the manufacturer intentionally introduces mercury, including, but not limited to, electric lamps, thermostats, automotive devices, electric switches, medical or scientific instruments, electric relays or other electrical devices, but not including products made with coal ash or other products that are incorporated into equipment used to manufacture semiconductor devices, elemental mercury in pre-capsulated form that is sold, distributed or provided to a dental practitioner for use in compliance with the department's regulations concerning amalgam wastewater and recycling for dental facilities, or mercury-added formulated products. 310 CMR 75.02:

Mercury-added Product includes mercury-added components that are incorporated into larger products.

Mercury Relay means a mercury-added product that opens or closes electrical contacts to affect the operation of other devices in the same or another electrical circuit.

Mercury Switch means a mercury-added product that opens or closes an electrical circuit or gas valve.

Mercury-added Thermostat means a product or device that uses a mercury switch to sense and control room temperature through communication with heating, ventilation or air conditioning equipment, including thermostats used to sense and control room temperature in residential, commercial, industrial and other buildings, but shall not include a thermostat used to sense and control temperature as part of a manufacturing process.

Person means any natural or corporate person, whether public or private, including corporations, societies, associations and partnerships and bodies politic and corporate, public agencies, authorities, departments, offices and political subdivisions of the Commonwealth.

Qualified mercury-added lamp recycler means a person who engages in the manual or mechanical separation of spent household mercury-added lamps to recover components and mercury contained therein, and meets the requirements of the Commonwealth of Massachusetts for handling, transporting and disposal of mercury-added lamps.

75.03: Applicability

(1) 310 CMR 75.00 applies to any person who manufactures, sells, offers for sale or distributes mercury-added products in Massachusetts.

(2) The following products are exempt from the requirements of 310 CMR 75.04:

- (a) motor vehicles and mercury-added components in motor vehicles,
- (b) refurbished medical equipment,
- (c) mercury-added button cell batteries,
- (d) products where the only mercury contained in the product is in one or more removable mercury-added button cell batteries,
- (e) products where the only mercury contained in the product is contained in one or more mercury-added lamps,
- (f) mercury-added formulated products intended to be totally consumed in use, such as reagents, cosmetics, cleaning products, pharmaceuticals and other laboratory chemicals.
- (g) Products made with coal ash,

- (h) Products that are incorporated into equipment used to manufacture semi-conductor devices, ~~or~~
(i) elemental mercury in pre-capsulated form that is sold, distributed or provided to a dental practitioner for use in compliance with the department's regulations concerning amalgam wastewater and recycling for dental facilities, or
(j) mercury-added thermostats subject to the requirements of 310 CMR 77.00.

(3) After December 28, 2007, once a mercury-added product is no longer sold, offered for sale, or distributed in Massachusetts, the product's manufacturer will no longer be subject to the requirements of 310 CMR 75.04.

(4) Compliance with 310 CMR 75.00 does not release manufacturers, distributors, wholesalers, or retailers from the need to comply with other applicable state, federal and local requirements.

(5) The Department shall deem a manufacturer of mercury-added lamps to have satisfied the requirements of 310 CMR 75.04 if such manufacturer who sells mercury-added lamps in the Commonwealth individually pays, until June 30, 2024, an annual registration fee in accordance with the requirements of 310 CMR 4.03(2): Table 4.03 individually or as a group, they develop and file with the Department an education plan in accordance and with the requirements of 310 CMR 75.05 ~~(2) and (3).~~ Manufacturers shall make such payments to the Department to be deposited into an expendable trust fund established in accordance with M.G.L. c. 6A, § 6. If a manufacturer fails to comply with these provisions, such manufacturer shall comply with the full terms and conditions of 310 CMR 75.04.

75.04: Plans for Collecting and Recycling Mercury-added Products

(1) No later than March 3, 2008, every manufacturer of a mercury-added product subject to 310 CMR 75.00 whose products are sold, offered for sale, or distributed in Massachusetts shall develop and file with the Department a plan for collection, storage (including containment of mercury added products and/or components), transportation, and recycling of end-of-life mercury-added products in accordance with 310 CMR 30.000. Such plans shall provide methods of collection and recycling that are convenient and accessible to product purchasers and users.

(2) No person shall sell, offer for sale or distribute a mercury-added product to which 310 CMR 75.00 applies after March 3, 2008, unless its manufacturer files with the Department a plan as specified in 310 CMR 75.04 for collecting its mercury-added product(s) at the end of the product's useful life and recycling its mercury content, and commences implementation of such plan.

(3) Every manufacturer of mercury-added products sold or distributed in Massachusetts shall be financially responsible for developing and implementing a plan that meets the requirements of 310 CMR 75.04.

(4) Where a mercury-added component is part of another product, the collection system shall provide for collection of the mercury-added component or collection of both the mercury-added component and the product containing it.

(5) Plans for collection and recycling of mercury-added products may be submitted by a trade association or industry group on behalf of a specific group of manufacturers.

(6) Plans for collection and recycling of mercury-added products shall include, at a minimum, the following information:

- (a) Applicant's name, telephone number, North American Industry Classification System, and web address. If a trade association is submitting a plan on behalf of a group of manufacturers, include trade association name, telephone number and web address, and list of participating manufacturers' names with respective contact information.
- (b) Applicant's address, including the mailing address.
- (c) The address, telephone number, and e-mail address of a contact person for the applicant.
- (d) A description of how to advise purchasers of the mercury-added product(s) about the collection and recycling program, including the purpose of the collection and recycling program, and how they may participate. The description must identify the parties who will be responsible for implementing the purchaser education plan, and the date on which it will commence implementation. Such description shall also include, but shall not be limited to, notification to all persons who sell, distribute, or offer the mercury-added product(s) for sale in Massachusetts that the product(s) cannot be sold unless they are covered by the manufacturer's collection and recycling plan. Such notification shall be repeated on a specified basis that shall be no less frequent than annually.
- (e) Location of all mercury-added components in each product covered by the Plan, and directions for removing them to aid collection (if appropriate).
- (f) If applicable, documentation regarding the intention of the applicant to phase-out use of

mercury in the product or the sale of the mercury-added product in Massachusetts, and the schedule for the phase-out.

(g) Identification of currently available collection and recycling methods for the mercury-added product(s) and information about the extent to which the mercury-added product(s) is currently collected and recycled at the end of its useful life.

(h) Description of the system that will be employed for collection, storage, transportation, and recycling of the mercury-added product(s), including provision for managing collected mercury-added products in accordance with 310 CMR 30.000. Such system shall be convenient and accessible for the product user. It may employ:

1. the direct return of an end-of-life product or component to the manufacturer, or its agents;
2. a drop off program where a receiving facility is no farther than a 30 minute driving distance for any Massachusetts generator of the end-of-life mercury-added product; or
3. another system that is as convenient to the product user as the original product purchase.

(i) Schedule for implementing the plan, including the date on which collection will commence. Collection shall commence no later than 45 days after submittal of the plan to the Department.

(j) Documentation of the commitment of all necessary parties to perform as intended in the planned collection and recycling program.

(k) Documentation demonstrating how the manufacturer will finance the proposed collection and recycling program. The cost of the program shall not be borne by state or local government. Financing may include the recovery of a product that has an economic value to processors, such as silver oxide batteries.

(l) The targeted recycling rate for the collection and recycling of mercury-added product(s), or components covered in the Plan, a description of the performance measures to be used to demonstrate that the collection and recycling program is meeting the target recycling rate and the recordkeeping protocol that will be implemented to demonstrate compliance with the Plan.

1. Such target recycling rate shall be expressed as a percentage, where the numerator is the number of mercury-added product(s) (or mercury-added components) expected to be collected in Massachusetts and recycled in each year of the Plan's operation, and the denominator is an estimate of the number of mercury-added products (or mercury-added components) expected to be available for collection in Massachusetts and recycling each year. The estimated number of products expected to be available for collection in any year shall be based on a rolling average life expectancy of the product (assuming normal use by the user) and sales data, and other indications of the number of products that are likely to be retired (or reach the end of their useful life) in each year.

2. For plans submitted by an individual manufacturer, the target recycling rate shall be based on that manufacturer's Massachusetts sales data and average product life expectancy. For plans submitted by a trade association or industry group on behalf of a group of manufacturers, the target recycling rate shall be based on the group's Massachusetts sales data and average product life expectancy.

3. The target recycling rate shall not be less than the rates established in 310 CMR 75.04(6)(l)3.: *Table 1*:

TABLE 1	
Target Recycling Rates for Mercury-added Products	
Generated in Massachusetts	
Calendar Year	Target Recycling Rate
2008	30%
2009	40%
2010	50%
2011	75%
Each subsequent year 75%	

4. The target recycling rate for mercury-added products first sold, offered for sale or distributed after March 3, 2008 shall be 75%, to be achieved by the end of the first full year of the product's sale or distribution in Massachusetts.

(m) Description of additional or alternative actions that will be implemented to improve the collection and recycling program and its operation in the event that the target recycling rate is not met, and

(n) Other special conditions or information related to the affected mercury-added product(s), such as special handling that will be required by product users to participate in the collection and recycling program.

(7) Submittal of Plans to the Department.

(a) Plans shall be filed with the Department in accordance with the schedule established in 310

CMR 75.04(1).

(b) Such plans shall be accompanied by the certification required by 310 CMR 75.04(9) and shall comply with the requirements of 310 CMR 70.03.

(8) Recordkeeping Requirements.

(a) Manufacturers subject to 310 CMR 75.00 shall keep records on-site that demonstrate compliance with 310 CMR 75.04, and the supporting information that the manufacturer relied upon to file the plan required by 310 CMR 75.04, and may be required to submit said records upon request of the Department.

(b) Records shall be maintained for at least five years.

(9) Annual Compliance Certification.

(a) Manufacturers subject to 310 CMR 75.04 shall submit a compliance certification annually to the Department. Such certification shall address compliance with the requirements of 310 CMR 75.04 on a form prescribed by the Department that shall include at least the following information:

1. The type and number of each mercury-added product collected in Massachusetts and recycled;
2. The estimated number of each mercury-added product expected to be available for collection in Massachusetts for recycling in the year covered by the certification, which shall be based on a rolling average life expectancy of the product (assuming normal use by the user);
3. The number of mercury-added products the manufacturer sold, offered for sale or distribution in Massachusetts in the year covered by the certification;
4. Calculation of the actual recycling rate;
5. Certification that documentation and records are being maintained as required by 310 CMR 75.04(8);
6. Certification that the plan will continue to be implemented (identifying any changes needed to address operating issues or to ensure that the target capture rate is met) during the coming year; and
7. The certification required by 310 CMR 70.03.

(b) Compliance certifications shall be submitted to the Department by March 31st of each year. The first compliance certification shall cover the period from the commencement of plan implementation through the first full calendar year of implementation.

(c) Information included in a compliance certification may be submitted to the Department with a claim of confidentiality, including a claim that the information is confidential business information, pursuant to 310 CMR 3.00 and/or the state public records act. A completed confidentiality form available from the Department shall be submitted along with the compliance certification wherein the rationale for the confidentiality claim, based on the criteria set out at 310 CMR 3.23, is described. When confidentiality is requested, the Department will follow standard confidentiality procedures laid out in 310 CMR 3.00. Information included in a compliance certification claimed to be confidential, as well as any documents the Department creates using that information (such as fee invoices), will be separated from the Department's public files and held as confidential until a public records request is made to see that information, whereupon the Department will make a final confidentiality determination pursuant to 310 CMR 3.00

75.05: Public Education Plans for Mercury-added Lamps

(1) A manufacturer of mercury-added lamps shall satisfy the requirements of 310 CMR 75.04 if, such manufacturer who sells mercury-added lamps in the Commonwealth of Massachusetts individually pays, until June 30, 2024, an annual registration fee in accordance with the requirements of 310 CMR 4.03(2): Table 4.03 and with the requirements of 310 CMR 75.05. Manufacturers shall make such payments to the Department to be deposited into an expendable trust fund established in accordance with M.G.L. c. 6A, § 6. Such fund shall be maintained for the purpose of Department and municipal administration, access, communication, enforcement, and education costs for proper mercury-added lamp recycling or disposal. Individually or as a group, they develop and file with the Department an education plan in accordance with 310 CMR 75.05(2) and (3).

(2) Manufacturers of mercury added lamps that either fail to pay an annual registration fee in accordance with 310 CMR 4.03(2): Table 4.03 and 310 CMR 75.05, or fail to submit and implement a collection and recycling plan and the annual compliance certifications pursuant to 310 CMR 75.04, shall not sell, offer to sell, or distribute mercury-added lamps in Massachusetts.

(3) Manufacturers of mercury-added lamps that do not submit a collection and recycling plan or the annual compliance certification pursuant to 310 CMR 75.04 shall comply with 310 CMR 75.05 (3) (a) or (b) below.

(a) Manufacturers that sold, offered for sale or distributed mercury-added lamps in Massachusetts in the prior calendar year shall submit to the Department:

1. on or before [30 days after promulgation date] and on or before March 1st of every year thereafter, through 2024, an annual registration on a form prescribed by the Department. Such

registration shall include the total number of mercury-added lamps sold by that manufacturer in Massachusetts in the previous calendar year, and the certification required by 310 CMR 75.05(8). This annual registration will also serve as a basis for an invoice for an annual registration fee based on mercury-added lamp sales in Massachusetts in the prior calendar year and established in accordance with 310 CMR 4.03(2): Table 4.03. Mercury-added lamp manufacturers choosing to calculate Massachusetts sales on the basis of population shall use the most recently published population estimates published by the United States Census Bureau; and
2. on or before the invoice payment due date of each year, the annual registration fee established in accordance with 310 CMR 4.03(2): Table 4.03.

(b) Manufacturers that did not sell, offer for sale, or distribute mercury-added lamps in Massachusetts in the prior calendar year shall submit a non-applicability notification to the Department on or before [30 days after promulgation date] and on or before March 1st of every year thereafter, through 2024.

1. Such notification shall be on a form prescribed by the Department and shall include the certification required by 310 CMR 75.05(8).

2. In calendar year 2018 such notification is only required from manufacturers that had submitted a mercury-added lamp compliance certification in 2014. Thereafter, through 2024, the non-applicability notification is only required from mercury-added lamp manufacturers that were required to submit an annual registration in the prior year.

(4) Each manufacturer of mercury-added lamps shall notify the Department when there has been a change in ownership. Such notification shall be submitted to the Department no later than 30 days following the change in ownership and shall include the date of the change in ownership.

(5) Manufacturers of mercury-added lamps shall individually or collectively provide mercury-added lamp retailers with a printed copy of the following notice free of charge upon request. The notice shall be in 24-point type or larger and shall state the following: "Fluorescent bulbs save energy and reduce environmental pollution. Note: Fluorescent bulbs contain a small amount of mercury and must be properly recycled at the end of their use. Contact your municipality or www.lamprecycle.org for bulb recycling options."

(6) Qualified mercury-added lamp recyclers shall:

(a) Upon collection of mercury-added lamps from within Massachusetts, provide a mercury-lamp recycling certificate to each person delivering mercury-added lamps from within Massachusetts to the facility. The certificate shall be on a form prescribed by the Department.

(b) Submit to the Department an annual report containing information regarding the recycling of mercury-added lamps by persons in the Commonwealth of Massachusetts on a form prescribed by the Department, including but not limited to:

1. The number of mercury-added lamp recycling certificates issued during the previous year.

2. The number of intact mercury-added lamps collected from within Massachusetts during the previous year, and

a. The number disposed.

b. The number from which the facility separated and recovered the components and mercury contained therein.

c. The amount of mercury disposed, and

d. The amount of mercury made available for reuse.

3. An estimate of the number of broken mercury-added lamps collected from within Massachusetts during the previous year and.

4. The name and address of the facility where the mercury-added lamps were recycled.

(7) Each person delivering mercury-added lamps from Massachusetts to a qualified mercury-added lamp recycler shall retain all mercury-lamp recycling certificates for a minimum of three years and provide access to such certificates upon request by the Department.

(8) The annual registration required by 310 CMR 75.05 (3)(a), the non-applicability notification described in 310 CMR 75.05 (3)(b), and the annual report required by 310 CMR 75.05(6)(b) shall include the following certification: "I, [name of Responsible Official, as defined in 310 CMR 70.02], attest under the pains and penalties of perjury:

(a) that I have personally examined and am familiar with the information contained in this submittal, including any and all documents accompanying this certification statement;

(b) that, based on my inquiry of those individuals responsible for obtaining the information, the information contained in this submittal is to the best of my knowledge, true, accurate, and complete; and

(c) that I am fully authorized to make this attestation on behalf of this facility or unit. I am aware that there are significant penalties, including, but not limited to possible fines and imprisonment, for submitting false, inaccurate, or incomplete information."

(2) Education plans shall, at a minimum, include the following information:

- (a) Economic and environmental benefits of mercury-added lamps;
- (b) The ways in which mercury can harm the environment and human health;
- (c) Proper disposal and recycling methods for mercury-added lamps;
- (d) Where and how to return, recycle, or properly dispose of mercury-added lamps; and
- (e) The meaning of the chemical symbol "Hg" and other symbols and non-English terms used to present the information described in 310 CMR 75.05(2) to consumers and municipalities.

(3) The information required in 310 CMR 75.05(2)(d) shall be provided to consumers through the use of a toll-free telephone number, internet web site(s), information labeled on the product, and either information included in the product's packaging or information otherwise accompanying the sale of mercury-added lamps.

(4) On or before March 31, 2008, each manufacturer of mercury-added lamps offered for sale or distribution in Massachusetts shall submit a report to the Department that provides information concerning mercury-added lamps that are expected to be available for recycling on an annual basis.

Such report shall contain:

- (a) the total number of mercury-added lamps sold by that manufacturer in Massachusetts annually in calendar years 2002 through 2007;
- (b) the total number of lamps sold by that manufacturer for use in the manufacture of semiconductor devices annually in calendar years 2002 through 2007, if available;
- (c) the annual difference between 310 CMR 75.05(4)(a) and (b), if available;
- (d) the average life expectancy of the mercury-added lamps sold into Massachusetts in each calendar year; and
- (e) the certification required by 310 CMR 70.03.

(5) Each manufacturer of mercury-added lamps offered for sale or distribution in Massachusetts shall submit an annual compliance certification to the Department on or before March 31st of each year.

Such certification shall be made on a form prescribed by the Department that contains at a minimum the following information:

- (a) Certification that the manufacturer is implementing and will continue to implement a public education plan in accordance with the requirements of 310 CMR 75.05;
- (b) The total number of mercury-added lamps sold by that manufacturer in Massachusetts in the previous calendar year;
- (c) The number of mercury-added lamps from Massachusetts recycled in the previous calendar year;
- (d) Any significant changes in the average life expectancy of the manufacturer's mercury-added lamps since the submittal of the report required by 310 CMR 75.05(4); and
- (e) The certification required by 310 CMR 70.03.

(6) The certifications required by 310 CMR 75.05(4) and (5) may be filed by a trade association or other group on behalf of more than one manufacturer. If such a "group" certification is filed, it shall contain:

- (a) the name of each manufacturer being represented;
- (b) the information required by 310 CMR 75.05(4) and (5) for the manufacturers as a group;
- (c) the annual Massachusetts sales figures for each manufacturer covered by the certification; and
- (d) the certification required by 310 CMR 70.03, signed by a Responsible Official (as defined in 310 CMR 70.02) of both the group and each individual manufacturer covered by the certification.

(7) Manufacturers may request that the Department keep the information described in 310 CMR 75.05(4) confidential, in accordance with the requirements and procedures established in 310 CMR 3.00.

(8) Determining Success of Education Plans:

- (a) The Department will calculate the recycling rate for mercury-added lamps for each calendar year, based on the reports and certifications submitted in compliance with 310 CMR 75.05(4) through (6). The Department may consider other available information (e.g., Department audits of reports).
- (b) If actual recycling of mercury-added lamps generated in Massachusetts meets or exceeds the target recycling rates established in 310 CMR 75.05(8)(b): *Table 2*, then lamp manufacturers shall continue to implement the education plan(s) described in 310 CMR 75.05(2) and (3).

TABLE 2

Target Recycling Rates for Mercury-added Lamps Generated in Massachusetts	
Calendar Year	Target Recycling Rate
2008	30%
2009	40%
2010	50%
2011	70%
Each subsequent year 70%	

(c) For any year in which recycling of mercury-added lamps generated in Massachusetts is less than the target recycling rates established in 310 CMR 75.05(8)(b): *Table 2*, manufacturers shall make a payment into an expendable trust fund established in accordance with M.G.L. c. 6A, § 6. Such fund shall be maintained for the purpose of providing grants to municipalities and regional authorities to facilitate the achievement of the target recycling rates established in 310 CMR 75.05(8)(b): *Table 2*.

(d) Payments to the expendable trust fund shall be made in accordance with the following formula (“% MMS” is the manufacturers’ percentage of the total sale of mercury-added lamps in Massachusetts during the particular calendar year in which the target recycling rate was not achieved). At the end of 2008:

1. If the actual recycling rate is within 3% points below the target recycling rate in any calendar year, each manufacturer’s payment shall be calculated as follows: $0.25 \times \%MMS \times \$1,000,000$.
2. If the actual recycling rate is more than 3% points but less than or equal to 6% points below the target recycling rate in any calendar year, each manufacturer’s payment shall be calculated as follows: $0.5 \times \%MMS \times \$1,000,000$.
3. If the actual recycling rate is more than 6% points but less than or equal to 9% points below the target recycling rate in any calendar year, each manufacturer’s payment shall be calculated as follows: $0.75 \times \%MMS \times \$1,000,000$.
4. If the actual recycling rate is more than 9% points below the target recycling rate in any calendar year, each manufacturer’s payment shall be calculated as follows: $\%MMS \times \$1,000,000$.

(e) At the end of calendar year 2009, the percentage increment between the payment levels in 310 CMR 75.05(8) shall be two percentage points. At the end of calendar year 2010 and in subsequent years, the percentage increment between the payment levels in 310 CMR 75.05(8) shall be one percentage point.

(f) Aggregate funding commitments by manufacturers shall not exceed \$1,000,000 for any year of non-compliance with the target recycling rates established in 310 CMR 75.05(8).

(g) Manufacturers’ individual contributions shall not exceed their respective market share of lamps sold in Massachusetts during the particular calendar year in which the target recycling rate was not achieved.

(h) For any year in which recycling of mercury-added lamps generated in Massachusetts is less than the target recycling rates established in 310 CMR 75.05(8)(b): *Table 2*, the Department shall notify manufacturers that payments pursuant to M.G.L. c. 21H, § 6J(e) are owed to the expendable trust fund described in 310 CMR 75.05(8)(e). Such notice shall:

1. Inform the manufacturers that recycling of mercury-added lamps failed to meet the target recycling rate for the specific calendar year;
2. Specify the total amount that manufacturers as a group shall pay into the expendable trust fund described in 310 CMR 75.05(8)(e); and
3. Specify the amount that the manufacturer shall pay into the expendable trust fund, as determined by 310 CMR 75.05(8)(d).

(i) Payments to the expendable trust fund shall be made within 45 days of receipt of the notice described in 310 CMR 75.05(8)(h).

(j) The Department will disburse funds from the expendable trust fund to municipalities and regional authorities through a competitive grant application process.

(k) In the event that a specific manufacturer certifies and provides to the Department the number of that manufacturer’s mercury-added lamps that were recycled in a given year, the Department will use such information to calculate an actual recycling rate for that specific manufacturer. If the Department determines that the manufacturer has achieved the target recycling rate for that year,

~~that manufacturer will not be obligated to make the payment into the expendable trust fund required by 310 CMR 75.05(8)(e) through (e) for that year. If the Department determines that the manufacturer has not achieved the target recycling rate, then the requirements of 310 CMR 75.05(8)(e) through (i) shall apply.~~

Technical Changes to 310 CMR 70.00

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

310 CMR 70.00: ENVIRONMENTAL RESULTS PROGRAM CERTIFICATION

70.01: Purpose and Authority

70.02: Definitions

70.03: Compliance Certification Requirements

70.04: Violations

70.01: Purpose and Authority

- (1) The purpose of 310 CMR 70.00 is to provide for the protection of public health, safety, welfare and the environment by requiring Environmental Results Program (ERP) facilities or units to submit a performance based compliance certification to the Department.
- (2) 310 CMR 70.00 is promulgated pursuant to the authority of M.G.L. c. 21, §§ 26 through 53 (the Massachusetts Clean Waters Act), M.G.L. c. 21A, §§ 2, 13 and 16, M.G.L. c. 21C (the Hazardous Waste Management Act), M.G.L. c. 21H, §§ 6A through 6N (the Mercury Management Act), M.G.L. c. 21O, § 4 (The Operation and Removal of Underground Storage Tanks), M.G.L. c. 111, §§ 142A through 142M (the Massachusetts Clean Air Act) and M.G.L. c. 111 § 150A (the Solid Waste Management Act).

70.02: Definitions

The definitions found in 310 CMR 70.02 are for use only in the compliance certification requirements contained in 310 CMR 70.00 and are not intended to replace the definitions of those terms in the underlying standards.

Certification means the certification form as prescribed by the Department pursuant to 310 CMR 70.03(2), which includes the certification statement requirements pursuant to 310 CMR 70.03(2).

Department means the Massachusetts Department of Environmental Protection.

Environmental Results Program (ERP) Facility or Unit means one of the following:

- (a) a dry cleaner subject to 310 CMR 7.26(10) through (16);
- (b) a photo processor subject to 310 CMR 71.00: *Industrial Wastewater Regulations for Photo Processors*;
- (c) a printer as defined in 310 CMR 7.26(22): Printer;
- (d) a boiler subject to 310 CMR 7.26(30) through (37);
- (e) an engine or combustion turbine subject to 310 CMR 7.26(40) through (44);
- (f) a dental facility subject to 310 CMR 73.00: *Amalgam Wastewater and Recycling Regulations for Dental Facilities*;
- (g) an industrial wastewater holding tank subject to 314 CMR 18.00: *Industrial Wastewater Holding Tank and Container Construction, Operation, and Record Keeping Requirements*.
- (h) a scrap recycling facility, vehicle recycler or vehicle manufacturer subject to 310 CMR 74.00: *Removal and Recycling of Mercury-added Components in Vehicles*;
- (i) a manufacturer of a mercury-added product subject to 310 CMR 75.00: *Collection, Recycling, Labeling, and Sales Ban of Mercury-added Products*;
- (j) a manufacturer of mercury-added lamps subject to 310 CMR 75.00: *Collection, Recycling, Labeling, and Sales Ban of Mercury-added Products*; or
- (k) an underground storage tank system subject to 310 CMR 80.00: *Underground Storage Tank (UST) Operator Training*.

(1)
ERP Sector means all ERP facilities or units of one type, with the exception of printers where the certification requirements for very small printers differ from those of other printers as defined in 310 CMR 7.26(22).

Operator means the person responsible for the over-all operation of an ERP facility or unit.

Owner means any person who has legal or equitable ownership, alone or with others, of an ERP facility or unit, including, but not limited to, any agent, executor, administrator, trustee, lessee, or guardian of the estate for the holder of legal title.

Person means any individual, partnership, corporation, syndicate, company, firm, association, authority, department, bureau, trust or group including, but not limited to, a city, town, county, the Commonwealth and its agencies, and the federal government.

Responsible Official is one of the following:

- (a) For a corporation: a president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function who has been duly authorized pursuant to a corporate vote, or a representative of the corporation who has been duly authorized pursuant to a corporate vote provided the representative is responsible for the overall operation of the facility or unit;
- (b) For a partnership: a general partner with the authority to bind the partnership or the proprietor, respectively;
- (c) For a sole proprietorship: the sole proprietor;
- (d) For a municipality, state, federal, or other public agency including any legislatively created authority, board, commission, district, etc.: either a principal executive officer or ranking elected official who is empowered to enter into contracts on behalf of the municipality or public agency.

Standards means those requirements listed in the certification form referred to in 310 CMR 70.03(2), including but not limited to 310 CMR 7.00: *Air Pollution Control*, 310 CMR 30.00:

Hazardous Waste, 71.00: *Industrial Wastewater Regulations for Photo Processors*, 72.00: *Industrial Wastewater Standard for Dry Cleaners*, 73.00: *Amalgam Wastewater and Recycling Regulations for Dental Facilities*, 74.00: *Removal and Recycling of Mercury-added Components in Vehicles*, 75.00: *Collection, Recycling, Labeling, and Sales Ban of Mercury-added Products*, 314 CMR 3.00: *Surface Water Discharge Permit Program*, 5.00: *Ground Water Discharge Permit Program*, or 12.00: *Operation and Maintenance and Pretreatment Standards for Wastewater Treatment Works and Indirect Dischargers*, requirements contained in NESHAP's (40 CFR Part 61 Subparts, and Part 63) or NSPS's (40 CFR Part 60 Subparts) that have been delegated to Massachusetts, and the terms and conditions of any permits issued pursuant to any of those regulations.

70.03: Compliance Certification Requirements

(1) Schedule for Submission of Compliance Certification.

- (a) The owner or operator of each ERP facility or unit shall submit a certification in accordance with 310 CMR 70.03(2) and thereafter shall submit, as applicable, a periodic compliance certification in accordance with the schedule set forth herein for the specific type of ERP facility or unit.
- (b) The owner or operator of each ERP facility or unit, except underground storage tank systems subject to 310 CMR 80.00: *Underground Storage Tank (UST) Operator Training*, shall submit a compliance certification in accordance with 310 CMR 70.03(1) and (2) within 60 days of:
 1. the commencement of operation of a new ERP facility or unit; except for boiler(s) subject to 310 CMR 7.26(30): *U Boilers - Applicability* that must submit a certification in accordance with the schedule in 310 CMR 7.26(32): *Certification*;
 2. the recommencement of operation of an ERP facility or unit for which no certification was submitted during the year prior to recommencement; except for boiler(s) subject to 310 CMR 7.26(30): *U Boilers - Applicability* that must submit a certification in accordance with the schedule in 310 CMR 7.02(3)(m): *Reactivating an Inactive Emission Unit*; or
 3. acquiring an ERP facility or unit, unless exempted from this requirement pursuant to 314 CMR 18.10(3).
- (c) If a periodic compliance certification is required, then the owner or operator of the ERP facility or unit shall submit the compliance certification by the end of each certification period unless a statement of non-applicability is submitted to the Department on a form prescribed by the Department.

- (d) Notwithstanding 310 CMR 70.03(1)(a) and (b), a photo processor holding a permit from the Massachusetts Water Resources Authority pursuant to 360 CMR 10.000: *Sewer Use* is deemed to hold the equivalent of an ERP certification and is not required to file a one-time compliance certification pursuant to 310 CMR 70.00 and 71.00: *Industrial Wastewater Regulations for Photo Processors*, but such a photo processor is required to pay an annual compliance fee to the Department pursuant to 310 CMR 4.00: *Timely Action Schedule and Fee Provisions*.
- (e) A photo processor located in the service area of the Massachusetts Water Resources Authority and which hauls or ships photo processing waste off-site is required to file a one-time compliance certification pursuant to 310 CMR 70.00 and 71.00: *Industrial Wastewater Regulations for Photo Processors*.
- (f) Owners or operators of the following types of ERP facilities or units shall submit a periodic compliance certification to the Department by September 15th of each year except as provided in 310 CMR 70.03(h):
1. dry cleaners subject to 310 CMR 7.26(10) through (16); and
 2. printers, with the exception of very small printers, subject to 310 CMR 7.26(20) through (29).
- (g) The owner or operator of the following types of ERP facilities or units shall submit a periodic or one-time compliance certification in accordance with the following schedules:
1. The owner or operator of a facility with boilers subject to 310 CMR 7.26(30): *U Boilers - Applicability* shall submit a one-time certification in accordance with the schedule set forth in 310 CMR 7.26(32): *Certification*.
 2. The owner or operator of an industrial wastewater holding tank shall submit to the Department a one-time certification in accordance with the schedule and conditions set forth in 314 CMR 18.10: *Certification*..
 3. The owner or operator of a photo processor subject to 310 CMR 71.00: *Industrial Wastewater Regulations for Photo Processors* shall submit a one-time certification in accordance with 310 CMR 70.03(1)(b).
 4. The owner or operator of a very small printer as defined in 310 CMR 7.26(22) shall submit a one-time certification in accordance with 310 CMR 70.03(1)(b).
 5. The owner or operator of a dental facility subject to 310 CMR 73.00: *Amalgam Wastewater and Recycling Regulations for Dental Facilities* shall submit a certification in accordance with the schedule and conditions referenced in 310 CMR 73.07: *Compliance Certification Requirements for Dental Facilities*.
 6. An owner or operator of an engine or combustion turbine subject to 310 CMR 7.26(40) through (44) shall submit a certification in accordance with the schedule and conditions set forth in 310 CMR 7.26: *Industry Performance Standards*.
 7. Scrap recycling facilities, vehicle recyclers and vehicle manufacturers subject to 310 CMR 74.00: *Removal and Recycling of Mercury-added Components in Vehicles* shall submit certification forms in compliance with the applicable schedules and conditions referenced in 310 CMR 74.09: *Submittal of Compliance Certifications and Reports to the Department*.
 8. Manufacturers of mercury-added products and lamps subject to 310 CMR 75.00: *Collection, Recycling, Labeling, and Sales Ban of Mercury-added Products*, shall submit certification forms in compliance with the applicable schedules and conditions referenced in 310 CMR 75.04: *Plans for Collecting and Recycling Mercury-added Products*. ~~and 75.05: *Public Education Plan for Mercury-added Lamps*.~~
 9. An Owner or Operator of an underground storage tank system subject to 310 CMR 80.00: *Underground Storage Tank (UST) Operator Training* shall submit a certification in accordance with the schedule and conditions set forth in 310 CMR 80.34: *Requirements for Compliance Certification*.
- (h) The Department may determine a schedule, less frequently than the schedule in 310 CMR 70.03(1)(f), for submission of periodic compliance certifications, based on the following criteria:
1. the size, composition and activities of the ERP sector;
 2. the quantity and types of (toxic) materials used and potential wastes, emissions and discharges of the ERP sector;
 3. the degree of compliance with established regulatory requirements by the ERP sector;
 4. the degree of control over the environmental and public health aspects of activities by the ERP sector; and
 5. any other relevant information regarding the environmental consequences of the periodic compliance certifications and return to compliance response rates and results within the ERP sector.
- The Department will notify the public and affected businesses by publishing a notice in the *Massachusetts Environmental Policy Act Monitor* and may also notify an ERP sector through industry trade associations, the Department's website and other appropriate cost effective methods of changes in the ERP sector's certification schedule.

- (2) Certification Statement. The Responsible Official for each ERP facility or unit shall submit a compliance certification. Each compliance certification shall be on a form prescribed by the Department and shall address compliance with standards to which the ERP facility or unit is subject. The certification form may include specialized forms for specific categories of ERP facilities or units, and any owner/operator required to submit a certification pursuant to 310 CMR 70.03 shall submit all applicable forms. The compliance certification shall:
- (a) state whether the ERP facility or unit is in compliance with the applicable standards as listed on the certification form;
 - (b) identify any violations that occurred and the date of such violations within the certification period prior to the due date of the certification statement including, but not limited to, any notifications required pursuant to M.G.L. c. 21E, § 7 and 310 CMR 40.0300: *Notification of Releases and Threats of Release of Oil and Hazardous Materials*; Identification and Listing of Oil and Hazardous Materials (releases and threats of release of oil and/or hazardous material), and any reporting of violations required pursuant to 310 CMR 7.02(6): *Aggregated Emissions* (air pollution control equipment failures), 314 CMR 12.03(8) (emergency bypasses to sewer treatment works), 310 CMR 30.520: *Basis for Tier Classification* (hazardous waste contingency plans) and the terms and conditions of any permits issued by the Department; and
 - (c) state what the owner/operator will do to return to compliance and the date by which compliance will be achieved; and
 - (d) include the following statement: "I, [name of responsible official], attest under the pains and penalties of perjury:
 - 1. that I have personally examined and am familiar with the information contained in this submittal, including any and all documents accompanying this certification statement;
 - 2. that, based on my inquiry of those individuals responsible for obtaining the information, the information contained in this submittal is to the best of my knowledge, true, accurate, and complete;
 - 3. that systems to maintain compliance are in place at the facility or unit and will be maintained even if processes or operating procedures are changed; and
 - 4. that I am fully authorized to make this attestation on behalf of this facility or unit. I am aware that there are significant penalties, including, but not limited to possible fines and imprisonment, for submitting false, inaccurate, or incomplete information."
 - (e) provide any other information pertaining to the facility which the Department requires.

70.04: Violations

- (1) It shall be a violation of 310 CMR 70.00 for any person to:
- (a) fail to submit a timely certification pursuant to 310 CMR 70.03;
 - (b) make any false, inaccurate, incomplete, or misleading statements in any certification required pursuant to 310 CMR 70.03;
 - (c) make any false, inaccurate, incomplete or misleading statements in any record, report, plan, file, log, or register which that person is required to keep pursuant to the applicable standards;
 - (d) hold themselves out as a responsible official in violation of the requirements contained in 310 CMR 70.03;
 - (e) fail to comply with the applicable standards; or
 - (f) violate any other provision of 310 CMR 70.00.
- (2) The Department reserves the right to exercise the full extent of its legal authority, pursuant to M.G.L. c. 21, §§ 26 through 53 (Massachusetts Clean Waters Act), M.G.L. c. 21A, §§ 2, 8, 13 and 16, M.G.L. c. 21C (Hazardous Waste Management Act), M.G.L. c. 21H, §§ 6A through 6N (the Mercury Management Act), M.G.L. c. 21H, § 8, M.G.L. c. 21O, § 4 (The Operation and Removal of Underground Storage Tanks), M.G.L. c. 111, §§ 142A through 142M (Massachusetts Clean Air Act), and M.G.L. c. 111, § 150A (Solid Waste Management Act), in order to obtain full compliance with all requirements applicable to ERP facilities and units, including but not limited to, criminal prosecution, fines, civil and administrative penalties, and orders.

REGULATORY AUTHORITY

310 CMR 70.00: M.G.L. c. 21, §§ 26 through 53; c. 21A, §§ 2, 13 and 16; c. 21C, c. 21H, §§ 6A through 6N (the Mercury Management Act), c. 21O § 4, and c. 111, §§ 142A through 142M and 150A.

